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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,860	04/18/2001	Sanjay Savur	50013-00001	6235
25231	7590	10/20/2005	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP			WEINSTEIN, STEVEN L	
3151 SOUTH VAUGHN WAY			ART UNIT	PAPER NUMBER
SUITE 411			1761	
AURORA, CO 80014				

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/807,860	SAVUR ET AL.
	Examiner	Art Unit
	Steven L. Weinstein	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 June 2005 and 10 February 2005 and 02.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3,5,10-12,25,26,143,146,153,155-157 and 160 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,5,10-12,25,26,143,146,153,155-157, and 160 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,5,10-12,25,26,143,146,153,155-157, and 160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huston (WO'719) in view of Samuel (EP '021), Bishop (WO '753) Fukado (JP '083) and Lovegrove et al (EP '042), further in view of Bedrosian et al ('152) for the reasons fully and clearly detailed in the Office actions mailed 3/14/03, 9/5/03, and 3/29/04.

The Declaration filed 2/10/05, under 37 CFR 1.132, and the remarks accompanying the response have been fully and carefully considered but are not seen to be sufficient to overcome the prima facie case of obviousness. The declaration sets forth an opinion and fails to set forth facts. In each case, the Declarant states that, in his opinion, the skilled person in the art would have understood that if CO₂ levels were to be controlled then CO₂ levels would have to be monitored or that in his opinion it would not have been possible to take the teaching of Bedrosian and apply it to the other references. What are the facts to support these opinions? Contrary to what is urged, Bedrosian controls the atmosphere within the package. As discussed previously, Bedrosian controls the atmosphere within the package by using a film of selected permeability. Thus, although the technique is different than applicants, the atmosphere in both cases is controlled. Bedrosian, like the other references applied, and like applicant as well, would have determined the amount of gas concentration through

calculations that are known functions of temperature, time, weight of product, respiration rates, etc. Bedrosian therefore determined the gas concentrations but determined to insure an even further reduced CO₂ concentration for the same reason applicant does and that is to prevent CO₂ damage to the produce. Thus, Bedrosian employs the CO₂ absorbent for the same reason applicant does. To know how much CO₂ absorbent to add to the package to achieve the result desired, Bedrosian would have had to manipulate the same known variables. The art taken as a whole teaches one should reduce and monitor O₂ levels since it is the O₂ that is consumed by the produce and which is most effective in retarding the aging of the produce. The art taken as a whole teach that the CO₂ levels are preferably but not necessarily monitored. Presumably when the art monitors the CO₂ level it is to insure the levels are not injurious. Bedrosian teaches CO₂ absorbers can control such a potential problem. Therefore, since Bedrosian teaches one can add a CO₂ absorber to an enclosure to prevent excessive levels of CO₂ without the need to add a conventional CO₂ controller, the art taken as a whole fairly teaches it would have been obvious to add the CO₂ absorber to the combination to maintain a non-injurious level of CO₂ without the need to add a conventional CO₂ monitor. Note too that Bedrosian does not have to disclose the particular physical environment since that is already taught to be conventional by the other art applied. Note further that the result appears to be an expected result not an unexpected result. In view of Bedrosian, one would expect to be able to maintain a desired, non-injurious level of CO₂ without a monitoring system.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Art Unit: 1761

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761